

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IRMA ENDERLE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:13-cv-23382

BOSTON SCIENTIFIC CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is Defendant Boston Scientific Corporation's Motion to Dismiss With Prejudice, filed February 21, 2019. [ECF No. 20]. In the motion, defendant Boston Scientific Corporation ("BSC") moves the court for an order dismissing plaintiffs' case with prejudice for failure to serve a timely Plaintiff Fact Sheet pursuant to deadlines and requirements established by Pretrial Order Nos. 17 and 328. Plaintiffs have not responded to the motion.

The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that BSC should be dismissed without prejudice from this case for plaintiffs' failure to serve a Plaintiff Fact Sheet in compliance with the court's applicable pretrial orders.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 20] is **GRANTED in part** to the extent BSC seeks dismissal and **DENIED insofar as** BSC

seeks dismissal with prejudice. The court **ORDERS** that BSC is dismissed without prejudice, and this case is closed and stricken from the court's docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 16, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE